

April 19, 2001

Senator Thomas K. Duane
275 7th Avenue
12th Floor
New York, New York 10001

SENT VIA FACSIMILE

RE: PROPOSED COMMUTER TAX

Dear Sen. Duane:

I understand that you have introduced legislation to reinstate the New York City Commuter Tax for people who work in New York City but live outside of New York State.

If these reports are accurate, and your proposal will apply to out-of-state commuters only, I will promptly and vigorously again sue to strike down the tax, as I did after a similar bill was passed by the New York General Assembly and signed by Gov. George Pataki in 1999. That tax was ruled unconstitutional by the courts in New York, including your state's highest court in *City of New York et al. v. State of New York*, 94 N.Y. 2d 577 (2000).

This tax would be an affront to basic fairness -- a selective, arbitrary and discriminatory burden of the kind that our constitutional framers specifically fought to forbid. In discriminating against nonresidents, it would violate three specific provisions of the United States Constitution: the Privileges and Immunities Clause, the Commerce Clause, and the Equal Protection Clause.

Such a blatantly illegal tax would also be a grave insult to the New York Court of Appeals, which struck down the previous version in clear, unequivocal terms, stating, "the tax scheme benefits residents of New York and burdens residents of other States who commute to New York City on a daily basis. The law promotes economic protectionism and is incompatible with a single national economic unit. It therefore is facially invalid." *Id.* at 17.

Connecticut residents, who travel and work side by side in New York with New York residents, are justifiably concerned that New York is once again targeting out-of-state-commuters to unfairly and illegally shoulder New York's fiscal burden. Your proposal creates both false fears and false hopes -- unnecessary fears that may cause Connecticut residents to forgo jobs or other

Senator Thomas K. Duane

April 19, 2001

Page 2

opportunities in New York City, and unfounded hopes among New York City residents that this doomed measure may provide them with some tax relief.

As I said when the unconstitutional Commuter Tax was signed by Gov. Pataki in May, 1999, Connecticut will not tolerate and will fight to judicially strike down an illegal and discriminatory tax burden on our residents who work and travel side-by-side with New York residents. A measure of this kind can only inspire unnecessary conflict and tax wars between sovereign neighbors who should be working together to address economic challenges.

Controlling court decisions are so strong and clear that tinkering with the details of a commuter tax cannot possibly produce a bill that will pass constitutional muster. It appears to me that your efforts in this matter are both wasteful and doomed to fail.

Very truly yours,

Richard Blumenthal
Attorney General

RB/cm